

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
Case No. 22-11068 (JTD)
FTX TRADING LTD., .
et al., . (Jointly Administered)
Courtroom No. 5
824 Market Street
Debtors. . Wilmington, Delaware 19801
Tuesday, October 1, 2024
. 2:00 p.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Proceedings commenced at 2:00 p.m.)

2 THE COURT: Good afternoon, this is Judge Dorsey.
3 We're on the record in FTX Trading LTD, Case Number 22-11068.
4 This was debtors' motion to quash notice of deposition.

5 Mr. Landis or Mr. Glueckstein --

6 MR. LANDIS: That's correct, Your Honor. Good
7 afternoon and may it please the Court, Adam Landis from
8 Landis Rath & Cobb on behalf of FTX Trading LTD and its
9 related debtors. We filed an amended notice of agenda for
10 this hearing yesterday and I hope Your Honor has all the
11 documents. We have two matters going forward today:
12 Number 1 is the motion of the debtors for the entry of the
13 order quashing the LayerZero Parties' notice of deposition,
14 and a housekeeping matter at Item 2 in connection with the
15 debtors' motion for leave to file a reply to LayerZero's
16 opposition to the motion.

17 With that, I would cede the virtual podium to Mr.
18 Glueckstein, who will argue the motion.

19 THE COURT: All right. Mr. Glueckstein?

20 MR. GLUECKSTEIN: Thank you, Your Honor, good
21 afternoon; for the record, Brian Glueckstein, Sullivan &
22 Cromwell for the debtors.

23 Your Honor, LayerZero has filed primarily a legal
24 objection to the debtors' plan, which will be addressed at
25 the confirmation hearing next week, effectively whether the

1 debtors were somehow required to make its customer preference
2 settlement offer available to the LayerZero Parties. The
3 LayerZero Parties are defendants in an adversary proceeding
4 that they are, frankly, upset that's being pursued. That
5 litigation includes, among other claims, preference claims,
6 and will be adjudicated on its merits, if not resolved on
7 terms acceptable to the debtors.

8 In a flawed attempt to improve their leverage with
9 respect to the adversary proceeding, the LayerZero Parties
10 filed a meritless objection to the plan confirmation that we
11 will address next week, and then sought to burden the
12 debtors' CEO, Mr. John Ray, with a deposition on the eve of
13 the confirmation hearing.

14 Your Honor, LayerZero's true colors were exposed
15 when after first attempting to depose Mr. Ray in the
16 adversary proceeding, prior to completion of the document
17 production in that case, about subjects he knew nothing
18 about, LayerZero abandoned that effort and just three hours
19 later issued a new notice for Mr. Ray's deposition, this time
20 purportedly in furtherance of their plan objection.

21 The debtors made clear in meet-and-confer
22 discussions that Mr. Ray would not be called as a witness at
23 next week's confirmation hearing, and that the debtors
24 intended to reply on another -- intended to rely on another
25 witness for any testimony concerning the customer preference

1 settlement that's at issue in the LayerZero objection. In
2 fact, we have now filed our witness and exhibit lists for
3 next week's confirmation hearing and Mr. Ray is not on it.
4 LayerZero, nonetheless, stands on its deposition notice to
5 Mr. Ray, which necessitated this motion.

6 LayerZero also noticed a deposition pursuant to
7 Rule 30(b)(6) to the debtors with respect to its plan
8 objection, focused on the customer preference settlement and
9 related plan provisions. That deposition occurred earlier
10 today with Mr. Steve Coverick of Alvarez & Marsal serving as
11 the debtors' corporate representative. Mr. Coverick is also
12 the witness the debtors put forward and will put forward at
13 next week's confirmation hearing offering testimony in a
14 confirmation declaration filed with the Court yesterday with
15 respect to, among other things, the customer preference
16 settlement that is the focus of the LayerZero Parties'
17 objection.

18 Mr. Coverick testified on behalf of the debtors as
19 to all relevant issues, and also confirmed that he had
20 personal knowledge and was present at the negotiations of the
21 customer preference settlement. He also explained under oath
22 this morning the criteria and process used by the debtors to
23 determine who would receive customer preference settlement
24 offers and who would not. Even now, LayerZero continues to
25 maintain it needs to depose Mr. Ray with respect to, as they

1 put it, why the LayerZero Parties were excluded from the
2 offer of the customer preference claim settlement; we
3 respectfully disagree. Putting aside for now the issue of
4 whether it's even relevant why the LayerZero Parties did not
5 receive a settlement offer, the relevant questions were
6 answered by Mr. Coverick in any event.

7 The reasons for the debtors' retaining their
8 preference claim settlement against LayerZero are both clear
9 from the public record and now have been explained by Mr.
10 Coverick on behalf of the debtors.

11 In short, the preference claims against LayerZero
12 satisfy the criteria, heavily negotiated with the debtors'
13 creditor constituencies and detailed in Section 5.5 of the
14 plan, including that the debtors have other litigation claims
15 that have been asserted against LayerZero and its affiliates,
16 as defined in the Bankruptcy Code. In such circumstances,
17 the debtors determined, as with other litigation defendants,
18 that they were not prepared to offer to settle their
19 preference claims on a stand-alone basis at this time. Yet
20 LayerZero continues to demand Mr. Ray's deposition by
21 attempting to argue in their opposition brief that the Apex
22 Doctrine somehow requires the debtors to prove that Mr. Ray
23 both does not have superior or unique knowledge and that
24 there are other, less burdensome sources for discovery, and
25 we submit that's completely backwards.

1 Well-established Apex Doctrine law protects
2 burdensome or harassing discovery from Mr. Ray unless
3 LayerZero can rebut the presumption against a deposition by
4 showing, one, that Mr. Ray has superior knowledge of the
5 facts alleged; and, two, why the information sought could not
6 be obtained from less burdensome means. LayerZero has failed
7 to provide any legitimate reason why Mr. Ray has superior or
8 unique knowledge of an issue on which the debtors are relying
9 on Mr. Coverick for testimony at the confirmation hearing,
10 particularly when combined with the circumstances on which
11 the notice was issued, within hours of filing and abandoning
12 an improper deposition in the adversary proceeding. The
13 deposition should be quashed on this basis alone.

14 LayerZero seems to rely on the fact that Mr. Ray
15 was the corporate representative present for the relevant
16 negotiations, that he signed the plan and/or had a role in
17 approving the customer priority settlement. The case law,
18 Your Honor, is clear that none of those standing alone
19 justify an Apex deposition of the debtors' chief executive
20 officer. It's addressed squarely in the Ford case cited in
21 our papers, 2011 WL 677331, which reviewed the Apex Doctrine
22 standard used by courts in the Third Circuit and specifically
23 held that, with respect to Mr. Ford, neither signing nor
24 approving an agreement rose to the level of superior
25 knowledge without a showing of more.

1 Mr. Coverick is as knowledgeable as Mr. Ray on the
2 issues of why the debtors made the preference settlement
3 offers it did to some, but not others, and how the criteria
4 for making those offers was negotiated with the creditors
5 committee and the ad hoc committee, other stakeholders, and
6 as he testified this morning. LayerZero fails to explain why
7 they could not obtain everything they are entitled to through
8 the just-completed deposition of Mr. Coverick, both as
9 a 30(b)(6) witness and in his capacity as a declarant on
10 behalf of the debtors.

11 Courts repeatedly apply the Apex Doctrine to bar
12 depositions where relevant means can be obtained -- where
13 relevant testimony can be obtained through less burdensome
14 means, including through a 30(b)(6) deposition. And we cite
15 cases to that effect including the Reif case, 248 F.R.D. 448,
16 in our papers.

17 Your Honor, in sum, LayerZero does nothing to
18 overcome the presumption that the deposition is an undue
19 burden on the debtors and Mr. Ray. Mr. Ray is leading every
20 aspect, as the Court is aware, of these very complex
21 Chapter 11 cases, including overseeing the preparation for
22 the confirmation hearing that will be held before Your Honor
23 in less than six days. Mr. Ray should not be burdened at
24 this critical juncture by an unnecessary, harassing
25 deposition that will not add anything to Mr. Coverick's

1 submitted declaration and his testimony today. LayerZero has
2 not submitted any evidence or other materials to the Court to
3 establish that Mr. Ray has the necessary relevant superior
4 knowledge for the Court to consider an Apex deposition taking
5 place on this schedule.

6 So with that, Your Honor, we submit the Court
7 should grant the motion and quash the deposition notice to
8 Mr. Ray, and I'm happy to answer any questions.

9 THE COURT: No questions at this time.

10 Mr. Dalsen?

11 MR. DALSEN: Thank you, Your Honor. Good
12 afternoon, may it please the Court.

13 Your Honor, the reason the deposition must go
14 forward is because FTX's 30(b)(6) witness this morning
15 testified that Mr. Ray is the sole FTX officer or employee
16 who was a part of the discussions leading to the customer
17 preference settlement and, most importantly, he was the one
18 who approved the exclusions listed at Section 5.5 of the plan
19 to that customer preference settlement. It was on Mr. Ray's
20 recommendation that the board ultimately approved it, but
21 Mr. Ray appears to be the only one who has performed any kind
22 of assessment based on -- or any kind of evaluation, I should
23 say, of the assessment of debtors' counsel as to which
24 creditors fall within the exclusions identified in
25 Section 5.5. That is precisely what gives him unique and

1 superior knowledge.

2 The 30(b)(6) witness today could not testify even
3 as to which criteria in Section 5.5 of the plan applied to
4 any member of the LayerZero Group. Instead, the testimony
5 was that the LayerZero Group, its members, all three of them,
6 have been excluded simply because there is a lawsuit pending
7 against them. That is not what Section 5.5 says, and it's
8 particularly confusing given that Section 5.5(b) only says
9 that there will be an exclusion where there is an action
10 other than a customer preference action asserted against a
11 creditor, and for Mr. Litan and for Skip & Goose that is not
12 the case.

13 In our view, Your Honor, these criteria, which the
14 witness kept calling objective criteria, in Section 5.5,
15 either these criteria mean something or they don't mean
16 something, but what we do know is that the witness could not
17 tell us, number one, which criteria, which exclusions were
18 actually applied to any one of my clients; and, number two,
19 other than identifying the fact of a lawsuit existing against
20 the members of the LayerZero Group, could not identify any
21 documents, could not identify any information that would
22 support the application of those exclusions.

23 We also inquired of the witness today, looking to
24 the confirmation, the reply brief in support of confirmation,
25 that's Docket 26039, and specifically paragraph 18 in which

1 the debtors state that there is -- that the preference
2 defendants, like the LayerZero Group, and it goes on to say
3 something about may have had knowledge of the commingling and
4 misuse of customer deposits. We asked the witness, what
5 evidence do you have that LayerZero Labs, that Mr. Litan,
6 Skip & Goose may have had knowledge of this commingling and
7 misuse of customer deposits. The witness could not identify
8 anything and simply referred to the existence of the lawsuit.

9 We also inquired, what does it mean at the end of
10 paragraph 18 of this reply that it's simply enough to be
11 otherwise involved with the debtors in other litigation
12 regarding valuable assets. That is not a criterion listed in
13 Section 5.5. And that really matters here because we also
14 asked the witness, showing him Section 5.5 of the second
15 amended plan, we asked him whether there was anything, any
16 criteria other than those expressly listed here that were
17 applied to any of the customer preference actions, and the
18 answer was no.

19 We even went further to say -- it says, among
20 other things, was there something here that's not disclosed?
21 He said, no, these are the criteria, that was his
22 understanding.

23 Your Honor, it seems to me, based on the
24 deposition, that the only assessment and the only application
25 of these criteria have been performed by counsel -- counsel

1 to the debtors, and that means a few things. Number one, it
2 means that Mr. Ray is the only person who possibly could have
3 performed any kind of assessment, who could have evaluated
4 the findings and the bases that debtors' counsel used to, in
5 the words of the plan, determine there is a reasonable basis
6 to conclude that one of these criteria apply. We don't know
7 what those are, and the problem with that is that without
8 knowing what are the bases to -- again, in terms of
9 Section 5.5 -- to determine that there is a reasonable basis
10 to conclude that one of the or more of these criteria apply.

11 It's first of all impossible for us to challenge
12 with evidence the application of those criteria because we
13 don't know what the criteria are that have been applied to
14 us; number two, we also don't know what evidence they're
15 talking about.

16 The Court, as we note in our papers, did note to
17 us that we need to seek evidence, and we are seeking
18 evidence, the problem here is that the witness provided to us
19 is not the person who has it.

20 And that brings us, I think, to the Apex Doctrine
21 issue, which, again, as we note in our papers, but it's
22 confirmed today with the deposition, Mr. Ray is in fact the
23 only FTX officer or employee who had involvement with these
24 issues. He was there, he does have knowledge, but critically
25 he is the only person, so far as we can tell, who performed

1 any kind of analysis, who looked at the determinations of
2 debtors' counsel, and upon being satisfied with whatever
3 those criteria were and whatever the evidence was, had
4 ultimately replied to the LayerZero Group to exclude them
5 from the customer preference action, he's the only one who
6 knows.

7 There are no other lower-level employees who
8 attended those meetings. We asked about that specifically.
9 There are no other officers who attended those meetings, we
10 also asked about that specifically. In that case, Your
11 Honor, it's -- you know, the Apex Doctrine, it's there to
12 protect simply asking chief executive officers and other
13 high-ranking employees for a deposition just for fun, and of
14 course the suggestion from the debtors is that this is meant
15 for harassment. This is not just for fun, it's not for
16 harassment.

17 The adversary proceeding, the considerations there
18 are very different than those here. I don't think we need to
19 belabor the point, but in the adversary proceeding whether
20 Mr. Ray has personal knowledge of the transactions that are
21 at issue in that proceeding is a completely different
22 question from whether Mr. Ray has personal knowledge
23 regarding the plan, regarding the customer preference
24 settlement, regarding these exclusions, and, critically,
25 their application to creditors, the application to my

1 clients. Right now, all we have is an explanation that
2 those criteria must have been applied, that it was the
3 witness's understanding they had been applied somehow, but we
4 don't know which criteria, we don't know the basis for the
5 application and the only person left to ask is the person who
6 was actually there and who approved these exclusions and
7 approved what debtors' counsel came up with as an
8 application, and that's Mr. Ray and that's why his deposition
9 needs to continue, Your Honor.

10 I'll pause there and see if the Court has any
11 questions.

12 THE COURT: Well, yeah. The debtors have said
13 they're not calling Mr. Ray, and you've taken a 30(b)(6)
14 deposition and the debtors had an obligation to produce a
15 witness who could answer the questions that had to do with
16 the categories of information that you were looking for. If
17 they didn't produce somebody, why would you even want to take
18 Mr. Ray's deposition if you have what you need? What they
19 have now, you're telling me they have nothing, they can't
20 prove it, and it's their burden.

21 So, if they can't prove it, why do you need
22 Mr. Ray's?

23 MR. DALSEN: Well, Your Honor, because in our
24 view, if we're being excluded and there is a reason for it,
25 we should know what that reason is. And, yes, it may be that

1 they're not going to present -- I guess they're not going to
2 present evidence on why it is that they're going to exclude
3 LayerZero Group members from Section 5.5, but that also
4 means -- the other problem with this, the other side of the
5 coin, is the debtors saying that we're the ones who need to
6 come up with the evidence, that we're the ones who need to
7 say that there's -- to establish that there's some reason
8 that this is unfair.

9 THE COURT: Well, they're treating you --

10 MR. DALSEN: And with --

11 THE COURT: -- they're -- I mean, I can look at
12 the face of the documents and say you're being treated
13 differently from other creditors, so the question is why, and
14 that's the debtors' burden to establish why you're being
15 treated differently, not yours.

16 MR. DALSEN: I think, Your Honor, the concern that
17 I have is that there's exactly one other person who would
18 have an answer to this. And I don't know -- it sounds like
19 Mr. Ray presently, he's not expected to testify in the
20 confirmation hearing, whether -- but he is heavily involved
21 with the preparation for confirmation. Whether it is that
22 they -- that the debtors choose to present other evidence
23 that was not given to their witness to prepare for today, I
24 don't know.

25 What I do know is that I have one other witness

1 who actually knows the answers to these questions and,
2 importantly, knows the answers to questions to issues to
3 which this witness was not privy, and that's what were these
4 criteria that were actually applied to the LayerZero Group
5 because that apparently did happen, we just don't know what
6 happened, what evidence Mr. Ray looked at to satisfy himself
7 and recommend to the board that the debtors adopted. So
8 there is evidence out there. Then the question is, well,
9 what is in evidence and has it been applied in a way that's
10 not fair or not consistent with what the plan says. That
11 could go to strengthen our objection to the plan and I think
12 that's why it matters, we have one other witness who can tell
13 us.

14 THE COURT: Well, either the criteria apply or
15 they don't. I mean, the criteria laid out in the plan, if
16 the debtors don't put on evidence to show that your client
17 meets one or more of those criteria, then they have --
18 they've got an issue, right? I mean, I don't -- I'm still
19 not getting why you would even want to take more discovery at
20 this point, it sounds like you have everything you need.

21 So let me go back to Mr. Glueckstein.

22 Mr. Glueckstein, do you have any response?

23 MR. GLUECKSTEIN: I do, Your Honor.

24 Brian Glueckstein, for the record.

25 If I could, I just want to step back for a moment

1 and I don't want to get too far down the road of the argument
2 of their actual objection. But in response to Your Honor's
3 comments, there's a dispute here, which is a fundamental
4 dispute and why I categorized in my initial characterization,
5 and we addressed this at length in our reply papers to
6 objections that we filed yesterday, that fundamentally, what
7 LayerZero is arguing is that the customer preference
8 settlement in the plan is discriminatory because it is plan
9 treatment; it is treatment on accounted claims and we
10 fundamentally disagree with that.

11 The customer preference settlement, as reflected
12 in the declaration submitted by Mr. Coverick, as testified at
13 today's deposition, was negotiated separately as a separate
14 settlement. It was implemented, it's being implemented, and
15 we're asking to implement it through the plan, so it's not
16 plan treatment.

17 So this whole discussion about whether the debtor
18 needs to, on a claimant-by-claimant basis, present evidence
19 on whether or not they should be included in an offer of
20 settlement to creditors, is a point of disagreement. But in
21 any event --

22 THE COURT: Well, isn't it a matter of the plan
23 whether, I mean, you've offered a plan, a settlement in
24 connection with the plan, so the question is, did you offer a
25 settlement only to some creditors and not all creditors, and

1 why? Why are you treating them differently; isn't that the
2 issue?

3 MR. GLUECKSTEIN: Well, the question is -- they
4 framed their objection as a discriminatory treatment of their
5 claim, right, and we disagree with that.

6 I think the question of whether or not the plan,
7 the settlement that's being asked to be approved on a 9019
8 basis through the plan and implemented through the plan, and
9 the fact that it was implemented through a balloting process,
10 is reasonable, you know, I'd submit is a different question.

11 And, regardless, the criteria is set out in the
12 plan. And to be clear, because there's -- there was some
13 misstatements in what was said by counsel with respect to
14 this -- the criteria that was discussed this morning at the
15 deposition is Section 5.5(b) of the plan, which says that a
16 creditor can be excluded from receiving the offer of
17 settlement from the debtors, which is what we did, if the
18 debtors have a, have determined that there's some reasonable
19 basis to conclude, amongst other things -- and the section
20 we're talking about, and that was the focus of the
21 deposition, is Subsection B -- that the debtor has a cause of
22 action or a defense against the recipient of the applicable
23 preferential treatment or transfer or a subsequent transferee
24 of the applicable customer entitlement claim or any of its
25 affiliates, other than a claim arising under a customer

1 preference action. And so we will address and can address --
2 we'll address at the hearing why the LayerZero Group
3 Defendants, each one of them fall within that criteria.

4 But this idea that Mr. Ray needs to testify about
5 what evaluation was done with respect to the debtors'
6 assessment of causes of action, we disagree. And part of the
7 issue this morning was the debtors don't have an obligation
8 to explain to counsel for LayerZero, the claims that they
9 have asserted or may assert.

10 They need to have a reasonable basis to determine
11 as the plan is drafted, that they have such causes of action
12 against these parties; that's a judgment of the debtor. And
13 Mr. Coverick explained the criteria for, that appears in the
14 plan, that was heavily negotiated with our Official Committee
15 and our Ad Hoc Committee, and what the debtors did from a
16 process perspective to evaluate the preference claims and
17 what parties ended up on that excluded party list.

18 And so the idea that Mr. Ray is going to somehow
19 now testify about the specifics of the claims that the
20 debtors are saying they have, that testimony is not going to
21 be any different, all right. It still falls into these same
22 categories.

23 So the suggestion that Mr. Ray was the only person
24 in the room is not correct. And I understand that Your Honor
25 does not have the benefit of the testimony this morning, but

1 I can represent that while it is true that Mr. Coverick
2 testified that Mr. Ray was the principal involved in the
3 negotiations and at the meetings, Mr. Coverick was equally
4 clear that he was at every, he and other professionals were
5 at every single relevant meeting that Mr. Ray was at. And
6 Mr. Coverick testified about how these criteria came to be
7 based on his recollection of being present at the meeting.

8 So this was not simply a 30(b)(6) witness being
9 prepared on these topics. He did that, but he also has
10 firsthand acknowledge, and he explained that Mr. Ray was at
11 those meetings. Mr. Ray was the company representative at
12 those meetings of the debtor, but that Mr. Ray, any meeting
13 that Mr. Ray participated in with respect to the negotiation
14 of this settlement, Mr. Coverick himself and his colleagues,
15 in addition to him, were at.

16 So Mr. Coverick testified to the relevant
17 information here, and so I don't see how -- it sounds like we
18 will continue to have a debate with the LayerZero parties
19 into the confirmation hearing on Monday about how this plan
20 provision operates, but there's nothing about what happened
21 at the deposition this morning or that what has been
22 presented to the Court in connection with this motion to
23 suggest that Mr. Ray is -- has superior knowledge and needs
24 to be deposed on this subject.

25 THE COURT: All right.

1 MR. DALSEN: Your Honor, if I may make a few
2 additional points?

3 THE COURT: Go ahead, Mr. Dalsen.

4 MR. DALSEN: Thank you, Your Honor.

5 Just a few things. I want to reiterate that
6 whether it's the debtors' burden to meet the standard to
7 confirm the plan is a separate question from our ability to
8 strengthen our objection. And I think one big issue, even in
9 view of what Mr. Glueckstein just said, is that sure, the
10 witness who appeared today was at a lot of meetings, but the
11 witness could not testify as to the application,
12 implementation of those exclusions in Section 5.5 to anybody,
13 including the LayerZero Group.

14 And this is a problem because if we don't know, we
15 can't test the strength of the application. We have no
16 ability to just challenge the classification, but also,
17 there's inconsistency at this point.

18 As I noted earlier in the confirmation reply,
19 paragraph 18, the debtors are saying that the LayerZero Group
20 may have had knowledge of the commingling and misuse of
21 customer deposits. But as Mr. Glueckstein said, the witness
22 didn't say any of that; the witness, instead, pointed
23 to 5.5(b) and could not identify any additional facts or
24 information to say that there was commingling.

25 And at least one concern that I have, Your Honor,

1 is we have testimony that conflicts with the filing that was
2 made just last night when it comes to what is the actual
3 basis to have excluded the LayerZero Group as an excluded
4 customer preference action. And in our view, we should have
5 the ability to test this, including because when it comes,
6 again, to Mr. Ray, specifically, since this witness could not
7 attest to the application and the implementation of these
8 criteria, that leaves Mr. Ray as the only other person left.

9 And if they're going to argue at confirmation that
10 there is something that our group may have had knowledge of
11 commingling and misuse, then we're entitled to know what
12 that's talking about. And the only other person we can get
13 this information from, as this witness could not testify to
14 it, is Mr. Ray, based on the witness' own testimony.

15 MR. GLUECKSTEIN: Your Honor, if I could --

16 THE COURT: Well, again, I come back to the fact
17 that the debtors put up a 30(b)(6) witness who was supposed
18 to be able to answer the questions. If he couldn't answer
19 the questions, they're precluded from producing evidence of
20 those issues at trial.

21 So, if, in fact, the witness said there may have
22 been knowledge of commingling of funds, but he doesn't have
23 any evidence of it and the debtors haven't identified any
24 other evidence they have, I'm not going to allow them to put
25 on any evidence at trial.

1 MR. DALSEN: I think, then, the question becomes,
2 Your Honor, because there is this dispute as to whether
3 Section 5.5 is plan treatment or whether it's, as the
4 debtors, I think would characterize it, you know, merely a
5 settlement, you know, we need to understand, given that that
6 is unresolved, I still think we need to understand the whole
7 playing field of the facts. There's an application --

8 THE COURT: That's a legal issue, isn't it?
9 That's a legal issue. Is it just a separate settlement or is
10 it part of the plan; I think that's a matter of law. I don't
11 know what facts --

12 MR. DALSEN: That's correct. That is correct,
13 Your Honor. But the bearing of the facts on the legal
14 determination, I think, is going to matter here. And if
15 Mr. Ray has additional information about why is it that we
16 have been excluded, that that goes to, again, strengthen our
17 objection, because so far as we can tell, it's true. We
18 don't believe that the witness today offered something. It
19 sounds like the debtors believe that he did offer enough.
20 There's going to be a dispute about that, as well.

21 And simply because there is this one witness left
22 who has this information, to the extent that this witness can
23 strengthen our objection, we feel that we need to go pursue
24 that testimony.

25 THE COURT: All right. Do we have a draft of this

1 deposition?

2 MR. GLUECKSTEIN: Yes, Your Honor.

3 THE COURT: All right.

4 MR. GLUECKSTEIN: We have a rough transcript of
5 the deposition.

6 THE COURT: All right. Send that to me and we're
7 going to -- I'm going to recess until -- how long is this?
8 It doesn't sound like it lasted very long, this deposition.

9 MR. GLUECKSTEIN: It was about two and a half
10 hours, Your Honor. It's not a particularly long transcript.

11 THE COURT: Okay. We'll take a recess
12 until 3:30 -- if you can get that to me right away -- and
13 we'll come back on and I'll give you my ruling at that time.

14 MR. GLUECKSTEIN: Okay. Thank you, Your Honor.

15 THE COURT: All right.

16 MR. DALSEN: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. GLUECKSTEIN: We'll get it right over to
19 chambers.

20 THE COURT: Thank you.

21 (Recess taken at 2:31 p.m.)

22 (Proceedings resumed at 3:31 p.m.)

23 THE COURT: Okay. Good afternoon, it's Judge
24 Dorsey. We're back on the record in FTX Trading Ltd., Case
25 Number 22-11068.

1 I've read the deposition transcript, the 30(b)(6)
2 deposition of Mr. Coverick. It seems like he was pretty
3 straightforward as to what he said the criteria that applied.
4 He said it was all -- and everything was in the complaint.
5 It was all about the complaint and everything is in the
6 complaint and that's the only document that's relevant.

7 I don't see how Mr. Ray is going to add anything
8 to that and it's going to be a distraction at this point,
9 this late point, as we approach confirmation, to have
10 Mr. Ray, subject to preparing for and attending a deposition,
11 where we already have the answer to the question. The
12 debtors produced the witness. They said it was
13 their 30(b)(6) witness. That's the answer they're stuck
14 with.

15 So, I don't see how deposing Mr. Ray is going to
16 accomplish anything. It would be a distraction and it would
17 cause potential, undue disruption for the debtors in
18 preparing for a confirmation, and all the other things going
19 on. I mean, there's a lot of other adversary proceedings
20 happening. There's a lot of things happening outside of this
21 court that Mr. Ray has to be involved in.

22 So, I do see him as an Apex party who needs to
23 avoid having to be distracted from a deposition like this.

24 So, Mr. Dalsen, did you take any written
25 discovery? Did you take, ask for documents?

1 MR. DALSEN: We did not, Your Honor. Based on the
2 deposition today, we may need to make some inquiry, because
3 the witness did identify some documents in his testimony.

4 THE COURT: Okay. Well, you still have some time.

5 Mr. Glueckstein, what is -- I see we have the
6 hearing on the 6th. It says, "pre-confirmation issues," so
7 what are we going to be talking about on next Monday?

8 MR. GLUECKSTEIN: The 6th -- the hearing --
9 the 7th is --

10 THE COURT: Or the -- yeah, the 7th.

11 MR. GLUECKSTEIN: -- that is the scheduled
12 confirmation hearing, Your Honor.

13 THE COURT: Okay. I have the confirmation hearing
14 on my calendar for the 28th --

15 MR. GLUECKSTEIN: Well, Your Honor --

16 THE COURT: -- through the 30th.

17 MR. GLUECKSTEIN: -- the -- it was a date held on
18 your calendar if we needed to have a lengthy trial. We had
19 also held the 7th for the confirmation hearing, and when the
20 solicitation procedures order was approved and went out to
21 creditors, we fixed that hearing, the 7th, as the
22 confirmation hearing date.

23 THE COURT: Okay. I just want to make sure
24 because the way it's listed on my calendar is confirmation
25 matters and an omnibus date, so I wasn't sure how that got on

1 that way.

2 MR. GLUECKSTEIN: Yeah, I think there were two
3 iterations that we had talked to your chambers about, Your
4 Honor, earlier in the summer when we weren't sure how many
5 time and the scope of both, discovery and objections on
6 certain issues would be required.

7 THE COURT: Okay.

8 MR. GLUECKSTEIN: But we had, you know, we had
9 agreed, and Your Honor had agreed, as I understand it, to
10 have the 7th as the confirmation hearing.

11 We are hopeful, given the nature of the remaining
12 objections, which are covered in our papers, most of which
13 are not evidentiary in nature, that we can efficiently use
14 the Court's time on the 7th.

15 THE COURT: Okay. Yes, I did see your responses
16 and it looks like all, but about seven of the objections have
17 been resolved is my understanding.

18 MR. GLUECKSTEIN: That's right, Your Honor.

19 THE COURT: Okay. All right.

20 MR. GLUECKSTEIN: And all of those are on, you
21 know, fairly discrete issues, as we outline in our papers.

22 THE COURT: Okay. And Mr. Landis had mentioned
23 there was another item on the agenda, a housekeeping matter.

24 What's that issue?

25 MR. LANDIS: That's correct, Your Honor.

1 That is Item 2, which was our motion for leave to
2 file a reply to LayerZero's opposition to the motion to
3 quash. We did upload and order in connection with that and
4 we wanted to make sure that it wasn't an item that was just
5 hanging out there.

6 THE COURT: All right. So just so we -- I did
7 review it, so we'll go ahead and I'll grant that order. That
8 can be filed.

9 MR. LANDIS: Thank you, Your Honor.

10 THE COURT: All right. Anything else for today?

11 MR. GLUECKSTEIN: No, Your Honor. Thank you very
12 much for addressing this matter and doing so virtually. We
13 appreciate the Court's time.

14 THE COURT: All right. Thank you.

15 We will see everybody on the 7th, I guess.

16 COUNSEL: Thank you, Your Honor.

17 THE COURT: Thank you.

18 We're adjourned.

19 (Proceedings concluded at 3:36 p.m.)
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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

October 1, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams

October 1, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable